

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 29 of 1998

WITH

INCOME TAX APPLICATION Nos. 30 of 1998 to 79 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

MINOR BHAGWANDAS K. PATEL

Appearance:

Mr. Mihir Joshi for MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 16/03/98

ORAL COMMON JUDGEMENT

(Per R.K.Abichandani,J)

In these applications, the Revenue has

suggested the following questions seeking a direction on the Income-tax Appellate Tribunal to forward statement of case under section 256(2) of the Income-tax Act.

- "1. Whether, the appellate Tribunal is right in law and on facts in rejecting the Miscellaneous Application for rectification, on the ground that since the revenue had not preferred Reference application under section 256(1), the issue cannot be allowed to be revived by making an application under section 254(2)?"
2. Whether, the Appellate Tribunal ought not to have considered that the additional ground did not arise from the Commissioner of Income-tax's order under section 263 against which order the Income-tax Appellate Tribunal had decided the appeal ?
3. Whether, the Appellate Tribunal ought not to have considered that the Miscellanenous application was clearly within the scope of section 254(2) ?
4. Whether the Appellate Tribunal ought not to have appreciated that the main trust and its beneficiaries are two separate and distinct persons having their respective separate legal entitites for the purpose of section 2(31) and tax paid by one could not be said to have been paid by the other ?"

2. In an application made under section 256(1) of the Act before the Tribunal for making reference of the aforesaid questions to this High Court, the Tribunal made an order on 3.6.1997 and held that no refrerrable question of law had arisen from its order. Earlier in the proceedings before the Tribunal, the assessee had raised an additional ground that the income of the main Trust was to be assessed in the case of assesseees Defferred Trusts. Hence, income tax paid by the main Trust on such income should be adjusted in the case of appellant Trusts as and when paid. The Tribunal had allowed this additional ground by directing the assessing officer to grant credit of taxes paid by the main Trust on proportionate basis in the cases of the appellant beneficiary trusts by treating those payments as having been made on the dates as and when paid or from the date of the adjustment/ refund vouchers which were treated as payments towards demands created against the main trust by passing order pursuant to order under

section 263 of the Act. The Tribunal found that admission of the additional ground and findings given thereon by it were in accordance with the Board's instructions and therefore, there was no referable question arising as suggested. In the process, the Tribunal observed that the department had not filed reference application under section 256(1) against the order of the Tribunal admitting additional ground. It was observed that the Revenue had resorted to circuitous method of reviving that issue again. Even without any need to make such observation that the Revenue had adopted a circuitous way, it was clear that there was no mistake apparent from the record which could have been rectified. The Tribunal had passed the speaking order about the admissibility of the additional ground. Such additional grounds can be taken before the Tribunal by obtaining its leave as envisaged by Rule 11 of the Income-tax (Appeal Tribunal), Rules, 1983. The Board of Direct Taxes had in fact given instructions which are reproduced in the order of the Tribunal dated 15.3.96 clarifying that the taxes paid in respect of the income protectively assessed should be treated as paid on the date on which original payment was actually made by the person in whose hands such an income was finally held to be assessable. The interest leviable and payable in such cases, under various provisions of the Act was required to be recomputed accordingly. The Tribunal rightly held that the additional ground was of consequential nature, and the direction given by it to the assessing officer, to grant credit of taxes paid by the main Trust on the proportionate basis in the cases of the appellant beneficiary deferred Trusts by treating those payments as they having been made on the date as and when paid or from the date of adjustment/ refund vouchers, which were treated as payments towards the demands created against the main Trust, was perfectly in conformity with the instructions issued by the Board. We therefore, agree with the Tribunal that no referable question of law arises in the matter from the decision of the Tribunal and all these applications are therefore, rejected.

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